

## **EXHIBIT I**

Declaration of Matthew K. Althoff, Cabinet Secretary of the  
South Dakota Department of Social Services

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

STATE OF TENNESSEE, et al., )  
Plaintiffs, )  
v. ) Civil Action No. 1:24cv161 LG-BWR  
XAVIER BECERRA, in his official )  
Capacity as Secretary of the United )  
States Department of Health and )  
Human Services, et al., )  
Defendants. )

## **DECLARATION OF MATTHEW K. ALTHOFF**

Pursuant to 28 U.S.C. § 1746, I, Matthew K. Althoff, duly affirm under penalty of perjury as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.
2. I serve as the Cabinet Secretary of the South Dakota Department of Social Services (Hereinafter “the Department”). The Department, through its Division of Medical Services, administers the State’s Medicaid program, as well as the State’s Children’s Health Insurance Program (“CHIP”).

3. As Secretary, my responsibilities include ensuring compliance with state and federal anti-discrimination laws. That comprises overseeing the teams that review and evaluate rules and regulations promulgated by federal agencies, including the U.S. Department of Health and Human Services (“HHS”), to determine whether they necessitate policy changes. Where such

changes are necessary – either because the Department does not have a policy required by the regulation or has a conflicting policy – I am ultimately responsible for executing a plan for bringing the Department into compliance.

4. The Department's mission is to improve lives through high-quality, cost-effective care. Accomplishing this mission requires partnership between the provider community, stakeholders, advocates, families, and the Department's employees. The Division of Medical Services, within the Department of Social Services, currently serves approximately 136,000 South Dakotans, including low-income individuals, pregnant women, children, caretaker relatives of young children and older adults and adults with disabilities.

5. As of June 12, 2024 approximately 76,000 minors were enrolled in the South Dakota's Medicaid program.

6. As of June 12, 2024, approximately 60,000 adults were enrolled in South Dakota's Medicaid program.

7. South Dakota Medicaid and CHIP received approximately \$873 Million in total federal funding in State Fiscal Year 2023.

8. HHS funding is used to pay a portion of the administrative costs of the Division of Medical Services, including employees' salaries and benefits. Most of these salaries and benefits are partially funding the Medicaid Administration Grant, and certain employees' salaries and benefits are specifically approved under distinct grant programs, such as Medicaid's Money Follows the Person.

9. The South Dakota Medicaid program does not provide coverage for puberty blockers, cross-sex hormones, or sex-transition surgeries. *See* South Dakota Codified Law §§ 28-6-1, and 34-24-34; Administrative Rules of South Dakota 67:16:01:06.01, 67:16:01:06.02, and 67:16:01:08; and South Dakota Medicaid Billing and Policy Manual, Physician Services.

10. South Dakota CHIP has the same exclusions for puberty blockers, cross-sex hormones, and sex-transition surgeries. *See* South Dakota Codified Law §§ 28-6-1, and 34-24-34; Administrative Rules of South Dakota 67:16:01:06.01, 67:16:01:06.02, and 67:16:01:08; and South Dakota Medicaid Billing and Policy Manual, Physician Services.

11. HHS has promulgated new regulations interpreting Section 1557 of the Affordable Care Act’s prohibition on discrimination “on the basis of sex” to include “gender identity” and other “sex characteristics.” Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) (“2024 Rule”).

12. If the 2024 Rule requires state Medicaid programs and health insurance plans to cover puberty blockers, cross-sex hormones, and sex-transition surgeries, South Dakota would not be able to enforce duly enacted laws, particularly SDCL34-24-34 without coming into conflict with the Rule.

13. If the 2024 Rule requires state Medicaid programs and health insurance plans to cover puberty blockers, cross-sex hormones, and sex transition surgeries, South Dakota risks losing significant federal funding.

14. Moreover, if South Dakota's Medicaid and CHIP programs were required to cover puberty blockers, cross-sex hormones, and sex-transition surgeries, there would be an immediate increase in state and federal expenditures.



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Matthew K. Althoff

Dated: June 13, 2024